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8 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION  
9 OF THE STATE OF CALIFORNIA  
10

11 In the Matter of: )  
12 THE COMMISSIONER OF FINANCIAL ) DESIST AND REFRAIN ORDER AND  
PROTECTION AND INNOVATION, ) ORDER ASSESSING PENALTIES  
13 )  
Complainant, ) (Cal. Fin. Code § 90015(b), (c), (d)(1))  
14 v. )  
15 CLAYTON BANNER AND ASSOCIATES )  
16 Respondent. )  
17 )  
18 )  
19 )

20 The Complainant, the Commissioner of Financial Protection and Innovation  
21 (Commissioner) of the Department of Financial Protection and Innovation (Department), is  
22 informed and believes, and based on such information and belief, finds as follows:

23 I.

24 **Introduction**

25 1. The Commissioner has jurisdiction over the licensing and regulation of persons  
26 engaged in the business of debt collection in California under the Debt Collection Licensing Act.

27 2. The Commissioner also has jurisdiction over the regulation of persons who engage,  
28 have engaged, and propose to engage in offering or providing a consumer financial product or

1 service in California and affiliated service providers under the California Consumer Financial  
2 Protection Law (CCFPL) (Cal. Fin. Code §§ 90000-90019). Collecting debt relating to a consumer  
3 financial product or service is conduct covered by the CCFPL. Cal. Fin. Code § 90005(k)(10).

4 3. At all relevant times, Clayton Banner and Associates (CBA) is a business entity of  
5 unknown form with a telephone number of (941) 444-8855 and an unknown principal place of  
6 business.

7 **II.**

8 **Factual Background**

9 4. Beginning in at least September 2022, CBA engaged in the business of debt  
10 collection in California as further described below.

11 5. On or around September 13, 2022, CBA contacted at least one California resident  
12 (Consumer) by placing telephone calls and leaving voicemails and making unlawful and/or  
13 deceptive statements in an attempt to collect a consumer debt, as follows:

- 14 a. The caller falsely claimed that the Consumer owed a credit card debt and that  
15 CBA had been retained to collect the debt in violation of California Civil  
16 Code section 1788.13(k) of the Rosenthal Fair Debt Collection Practices Act  
17 (Rosenthal Act) (Cal. Civ. Code §§ 1788-1788.33); and
- 18 b. The caller made a false representation that a legal proceeding had been, was  
19 about to be, or will be instituted unless the consumer paid the purported debt,  
20 in violation of California Civil Code section 1788.13(j) of the Rosenthal Act;  
21 and
- 22 c. The caller also made a false representation that if the Consumer did not pay  
23 the alleged debt, the Consumer would be arrested and her wages would be  
24 garnished, in violation of California Civil Code section 1788.13 (e) of the  
25 Rosenthal Fair Debt Collection Practices Act (Rosenthal Act) (Cal. Civ. Code  
26 §§ 1788-1788.33).

27 6. After speaking with representatives of CBA, the Consumer contacted the alleged  
28 original creditor to inquire more about the debt. The alleged original creditor said the Consumer did

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2 not have a debt with the creditor. To date, CBA is continuing to leave voicemails for the  
3 Consumer.

4 7. CBA statements in phone calls and voicemails in or around September 2022 were  
5 material and likely to mislead a consumer acting reasonably under the circumstances, constituting  
6 deceptive acts or practices in violation of California Financial Code section 90003(a)(1).

7 8. CBA also used false, deceptive or misleading representation or means in connection  
8 with the collection of any debt, in violation of title 15 of the United States Code section 1692e.

9 9. CBA also failed to provide at least one California consumer with any written  
10 notification that included the following information required pursuant to title 15 of the United  
11 States Code section 1692g(a) of the Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. §§  
12 1692 to 1692p), within five days of its initial communication regarding the alleged debt, in  
13 violation of California Civil Code section 1788.17: (1) the amount of the debt; (2) the name of the  
14 creditor to whom the debt is owed; (3) a statement that unless the consumer, within thirty days after  
15 receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be  
16 assumed to be valid by the debt collector; (4) a statement that if the consumer notifies the debt  
17 collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the  
18 debt collector will obtain verification of the debt or a copy of a judgment against the consumer and  
19 a copy of such verification or judgment will be mailed to the consumer by the debt collector; and  
20 (5) a statement that, upon the consumer’s written request within the thirty-day period, the debt  
21 collector will provide the consumer with the name and address of the original creditor, if different  
22 from the current creditor.

23 Failure to Submit License Application in Violation of the DCLA

24 10. The DCLA, which became effective on January 1, 2021, requires persons engaged  
25 in debt collection in California to be licensed beginning on January 1, 2022, pursuant to California  
26 Financial Code section 100001(a).

27 11. The Commissioner has not issued a license to CBA, authorizing it to engage in the  
28 business of debt collection under the DCLA. Furthermore, CBA has not applied for a license under

1 the DCLA. CBA Associates is not exempt from the licensing requirements of California Financial  
2 Code section 100001.

3 12. Beginning in or around at least September 2022, CBA engaged in the business of  
4 debt collection in this state by attempting to collect a debt from at least one California consumer, in  
5 violation of California Financial Code section 100001(a), and engaged in additional unlawful  
6 and/or deceptive acts or practices, as described in paragraphs 5 through 6 above.

7 **III.**

8 **Applicable Laws**

9 13. California Financial Code section 100001(a) provides that “[n]o person shall engage  
10 in the business of debt collection in this state without first obtaining a license.”

11 14. California Financial Code section 100002(h) defines “debt” as “money, property, or  
12 their equivalent that is due or owing or alleged to be due or owing from a natural person to another  
13 person.”

14 15. California Financial Code section 100002(f) provides:

15 “Consumer debt” or “consumer credit” as means money, property, or their  
16 equivalent, due or owing, or alleged to be due or owing, from a natural  
17 person by reason of a consumer credit transaction. The term “consumer  
18 debt” includes a mortgage debt. The term “consumer debt” includes  
19 “charged-off consumer debt” as defined in Section 1788.50 of the Civil  
20 Code.

21 16. California Financial Code section 100002(i) defines “debt collection” as “any act or  
22 practice in connection with the collection of consumer debt.”

23 17. California Financial Code section 100002(j) provides:

24 “Debt collector” means any person who, in the ordinary course of  
25 business, regularly, on the person’s own behalf or on behalf of others,  
26 engages in debt collection. The term includes any person who composes  
27 and sells, or offers to compose and sell, forms, letters and other collection  
28 media used or intended to be used for debt collection. The term “debt  
collector” includes “debt buyer” as defined in Section 1788.50 of the Civil  
Code.

18. California Financial Code section 90005 provides in relevant part:

(d) “Consumer financial law” means a federal or California law that  
directly and specifically regulates the manner, content, or terms and

1 conditions of any financial transaction, or any account, product, or service  
2 related thereto, with respect to a consumer . . .

3 (e) “Consumer financial product or service” means either of the following:  
4 (1) A financial product or service that is delivered, offered, or provided for  
5 use by consumers primarily for personal, family, or household purposes . .

6 (f) “Covered person” means, to the extent not preempted by federal law,  
7 any of the following: (1) Any person that engages in offering or providing  
8 a consumer financial product or service to a resident of this state . . .

9 (k) “Financial product or service” means . . . (10) **Collecting debt** related  
10 to any consumer financial product or service . . . (emphasis applied.)

11 19. California Financial Code section 90003(a) provides in relevant part:

12 (a) It is unlawful for a covered person or service provider, as defined in  
13 subdivision (f) of Section 90005, to do any of the following:

14 (1) Engage, have engaged, or propose to engage in any unlawful, unfair,  
15 deceptive, or abusive act or practice with respect to consumer financial  
16 products or services.

17 (2) Offer or provide to a consumer any financial product or service not in  
18 conformity with any consumer financial law or otherwise commit any act  
19 or omission in violation of a consumer financial law . . . .

20 20. The following are consumer financial laws within the meaning of California  
21 Financial Code section 90003(a)(2): the DCLA, the Rosenthal Act, and the FDCPA.

22 21. Section 1788.13 of the Rosenthal Act provides in relevant part:

23 No debt collector shall collect or attempt to collect a consumer debt by means of the  
24 following practices: . . . (e) The threat to any person that nonpayment of the consumer  
25 debt may result in the arrest of the debtor or the seizure, garnishment, attachment or  
26 sale of any property or the garnishment or attachment of wages of the debtor, unless  
27 such action is in fact contemplated by the debt collector and permitted by the law; (j)  
28 The false representation that a legal proceeding has been, is about to be, or will be  
instituted unless payment of a consumer debt is made; (k) The false representation  
that a consumer debt has been, is about to be, or will be sold, assigned, or referred to  
a debt collector for collection.”

29 22. Section 1788.17 of the Rosenthal Act provides in relevant part:

Notwithstanding any other provision of this title, every debt collector  
collecting or attempting to collect a consumer debt shall comply with the

provisions of Sections 1692b to 1692j, inclusive, of, and shall be subject to the remedies in Section 1692k of, Title 15 of the United States Code . . .

23. Section 1692e of the FDCPA provides in relevant part:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section: (2) The false representation of (a) the character, amount, or legal status of any debt . . . (4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action. (5) The threat to take any action that cannot legally be taken or that is not intended to be taken . . . (10) The use of any false representation of deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer . . .

24. Section 1692g of the FDCPA provides in relevant part:

(a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing--

- (1) the amount of the debt;
- (2) the name of the creditor to whom the debt is owed;
- (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
- (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
- (5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor...

25. California Financial Code section 90015(d) provides:

- (1) If, in the opinion of the department, any person engages, has engaged, or proposes to engage in any activity prohibited by Section 90003 or

1 90004, or an activity, act, practice, or course of business that violates a  
2 law, rule, order, or any condition imposed in writing on the person by the  
3 department, the department may issue an order directing the person to  
4 desist and refrain from engaging in the activity, act, practice, or course of  
5 business.

6 (2) If that person fails to file a written request for a hearing within 30 days  
7 from the date of service of the order, the order shall be deemed a final  
8 order of the commissioner.

9 26. California Financial Code section 90015(c) provides, “[a]fter notice and an  
10 opportunity to be heard, the commissioner may, by order, assess penalties under subdivision (c) of  
11 Section 90012.

12 27. California Financial Code section 90012(c) provides in relevant part:

13 In any civil or administrative action brought pursuant to this division, the  
14 following penalties shall apply:

15 (1) Any person that violates, through any act or omission, any provision of  
16 this division shall forfeit and pay a penalty pursuant to this subdivision.

17 (A) The penalty amounts are as follows:

18 (i) For any violation of this division, rule or final order, or condition  
19 imposed in writing by the department, a penalty may not exceed the  
20 greater of either five thousand dollars (\$5,000) for each day during which  
21 the violation or failure to pay continues, or two thousand five hundred  
22 dollars (\$2,500) for each act or omission in violation . . . .

23 **IV.**

24 **Desist and Refrain Order**

25 28. Based on the foregoing findings, the Commissioner is of the opinion that CAB is a  
26 covered person or service provider that engaged in unlawful acts or practices with respect to

27 consumer financial products or services in violation of California Financial Code section 90003

28 (a)(1). Further, the Commissioner finds that CAB violated California Financial Code section

90003(a)(2) by offering or providing to a consumer a financial product or service not in conformity

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1 with, or otherwise committed any act or omission in violation of, the following consumer financial  
2 laws:

- 3 a. Section 100001(a) of the DCLA;
- 4 b. Section 1788.13(e), (j), and (k) of the Rosenthal Act;
- 5 c. Section 1788.17 of the Rosenthal Act;
- 6 d. Section 1692e(2), (4), (5), and (10) of the FDCPA; and
- 7 e. Section 1692g(a) of the FDCPA.

8 29. Pursuant to California Financial Code section 90015(d)(1), Clayton Banner and  
9 Associates, and its managers, officers, directors, agents, owners, or employees, are hereby ordered  
10 to desist and refrain from engaging in, or proposing to engage in, unlawful acts or practices in  
11 collecting or attempting to collect any consumer debt in violation of California Financial Code  
12 section 90003(a)(1), or offer or provide to a consumer any financial product or service not in  
13 conformity with any consumer financial laws, in violation of California Financial Code section  
14 90003(a)(2), including but not limited to violating the following:

- 15 a. Section 100001(a) of the DCLA;
- 16 b. Section 1788.13 (e), (j), and (k) of the Rosenthal Act;
- 17 c. Section 1788.17 of the Rosenthal Act;
- 18 d. Section 1692e(2), (4), (5), and (10) of the FDCPA; and
- 19 e. Section 1692g(a) of the FDCPA.

20 30. Furthermore, based on the foregoing findings, the Commissioner is of the opinion  
21 that Clayton Banner and Associates is a covered person or service provider that engaged in  
22 deceptive acts or practices with respect to consumer financial products or services in violation of  
23 California Financial Code section 90003(a)(1).

24 31. Pursuant to California Financial Code section 90015(d)(1), CAB and its managers,  
25 officers, directors, agents, or employees, are hereby ordered to desist and refrain from engaging in,  
26 or proposing to engage in, deceptive acts or practices in collecting or attempting to collect any  
27 consumer debt in violation of California Financial Code section 90003(a)(1).

28 32. This Desist and Refrain Order is necessary, in the public interest and consistent with

1 the purposes, policies, and provisions of the CCFPL. This Desist and Refrain Order shall remain in  
2 full force and effect until further order of the Commissioner.

3 **V.**

4 **Order Assessing Penalties**

5 33. Pursuant to California Financial Code sections 90015(c) and 90012(c), and after due  
6 consideration of possible mitigating factors and other appropriateness considerations listed in  
7 California Financial Code section 90012(c)(1)(B), Clayton Banner and Associates is hereby ordered  
8 to pay the Commissioner a penalty of \$30,000.00 within 30 days of the date of this order. This  
9 penalty shall be made payable in the form of an Automated Clearing House deposit or cashier’s  
10 check made payable to the Department of Financial Protection and Innovation. The cashier’s check  
11 shall be mailed to the attention of “Accounting – Litigation” at Department of Financial Protection  
12 and Innovation, 2101 Arena Boulevard, Sacramento, California 95834-2036. Notice of such  
13 payment shall be concurrently sent to Jari M. Binder via e-mail at Jari.Binder@dfpi.ca.gov.

14 Dated: January 30, 2023  
15 San Francisco, California

CLOTHILDE V. HEWLETT  
Commissioner of Financial Protection and Innovation



16  
17 By: \_\_\_\_\_  
18 MARY ANN SMITH  
19 Deputy Commissioner  
20 Enforcement Division  
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